

Senate Budget & Fiscal Review



Subcommittee No. 3
on
Health, Human Services, Labor, and Veterans Affairs

Senator Wesley Chesbro, Chair
Senator Ray N. Haynes
Senator Deborah Ortiz

May 6, 2002

1:30 P.M.

ROOM 112

(Diane Van Maren, Consultant)

<u>Item</u>	<u>Description—Open Issues</u>
4300	Department of Developmental Services (consent item only)
4440	Department of Mental Health
0530	California Health & Human Services Agency
4260	Department of Health Services—Public Health and Medi-Cal

PLEASE NOTE: The May Revision Hearing for all issues pertaining to health, human services, developmental services, and mental health will be on Sunday, May 19th beginning at 4:00 PM in Room 4203. The Subcommittee will be closing down at this time.

I. 4300 Department of Developmental Services

ITEM RECOMMENDED FOR CONSENT

1. Technical Correction—Trailer Bill for Regional Center Contracting

Background and Proposed Action: In last year's omnibus health trailer bill—AB 430 (Cardenas) Statutes of 2001—language was included in Section 4640.6 which required Regional Centers to make all employment contracts available for public review.

SB 1191 (Speier), Statutes of 2001 which was a code clean-up bill, inadvertently chaptered out the trailer bill language. As such, the Chair of the Subcommittee is requesting to rectify this problem by placing the language back into trailer bill legislation.

The proposed language is as follows:

Add Section 4640.6 to Welfare and Institutions Code:

- (k) (1) Any contract between the department and a regional center entered into on and after January 1, 2002, shall require that all employment contracts entered into with regional center staff or contractors be available to the public for review, upon request. For purposes of this subdivision, no employment contract or portion thereof, may be deemed confidential or unavailable for public review.
- (2) Notwithstanding paragraph (1), no social security number of the contracting party may be disclosed.
- (3) The term of the employment contract between the regional center and an employee or contractor shall not exceed the term of the state's contract with the regional center.

II. 4440—Department of Mental Health

ISSUE FOR DISCUSSION

1. AB 3632 Mental Health Services to Special Education Pupils—Retrospective Aspect

Background—Mental Health Services to Special Education Pupils: Federal law (PL 94-142 of 1975-- the Education for All Handicapped Children Act—and the later Individuals with Disabilities Education Act (IDEA)) mandates states to provide services to children enrolled in special education, **including all related services as required to benefit from a free and appropriate education. Related services include mental health services**, occupational and physical therapy and residential placement.

In California, **prior to 1984 School Districts were also responsible for providing the related services to children enrolled in special education. However now, School Districts are only responsible for identifying children in need of special education services and for providing the instruction. This is because AB 3632 (W. Brown), Statutes of 1984, shifted responsibility for providing related services from School Districts and transferred these responsibilities to other state and county agencies.**

Generally, AB 3632 requires County Mental Health Departments to provide mental health services to special education pupils who need the services to benefit from their education (as identified in the student's Individualized Education Plan—IEP).

Mental health services include assessments, and all or a combination of individual therapy, family therapy, group therapy, day treatment, medication monitoring and prescribing, case management, and residential treatment. **Services to be provided, including initiation of service, duration and frequency of service, are included on the student's IEP and must be provided as indicated.** Services can only be discontinued on the recommendation of mental health and the approval of the IEP team, or by parental decision.

Emergency regulations to enact the provisions of AB 3632 were adopted in 1986 and remained in effect until 1997 when they were replaced with permanent program regulations enacted to conform with AB 2726, Statutes of 1996. One of the reasons emergency regulations were in affect for 11 years was because of the complexity of the program, including a multitude of issues regarding funding.

It is interesting to note that proponents of the enabling legislation characterized it as requiring coordination of existing services rather than an expansion of services. As such, they maintained that the bill would have minimal, if any costs associated with it. This perspective has been the source of amusement and frustration as considerable costs have

been incurred by all parties over the years. However, the increased services to children needing mental health services has been invaluable.

Funding for AB 3632: For the past decade, counties have paid for the cost of the program through (1) categorical funding provided by the DMH as appropriated through the state budget process, (2) mandate reimbursement claims as obtained via the State Commission on State Mandates process, (3) Realignment funds, and (4) third-party health insurance when applicable. **It is estimated that about \$100 million in total funds is expended annually.**

Generally, counties submit claims for the program to the Commission on State Mandates (Commission). It is recognized that these county claims have varied considerably, contingent upon the number of children served, duration and type of services deemed necessary to provide based on the IEP, and related factors. In addition, some counties have claimed up to 100 percent of the treatment costs for the program, while others have claimed other varying levels, including only 10 percent. **It should be noted that the State Controller's Office has "desk audited" these county claims for the past decade without significant exception for years.**

The categorical funding historically appropriated through the annual Budget Act is used as an offset in calculating the amount counties may claim as mandate reimbursements. This categorical funding began in 1986 and has stayed fairly constant since 1987-88. **However, it is widely recognized that program costs have exceeded the categorical appropriation right from the start, with county mandate claims funding the rest. The categorical appropriation (about \$12.3 million in 2001-02) funds only about 20 percent of the costs.**

Background--State Mandate Issue: In 1987, counties submitted a claim to the Commission on State Mandates (Commission), seeking reimbursement of costs in excess of the amount they had received from the state, beginning in 1986-87 for this program.

The Commission ruled in 1990 that counties were entitled to reimbursement of 100 percent of excess costs for assessment, case management, and participation in the IEP process, *and 10 percent of excess costs for treatment.*

It should be noted that the above percentages were derived from sharing ratios contained in the state's Short-Doyle Act, and were applied based on the Commission's conclusion that because the treatment portion of the program was required to be included in county Short-Doyle plans, *it was subject to Short-Doyle funding arrangements.* In 1991, the Commission adopted claiming "Parameters and Guidelines" (Guidelines) for the program *after* Realignment legislation passed which effectively eliminated Short-Doyle funding.

However, the California Mental Health Directors Association (CMHDA) contends that the Guidelines are flawed for several reasons, including the fact that **county realignment** legislation was enacted in 1991 (transferring most of the responsibility for the provision of public mental health services to the counties) and **that AB 3632 was not contained**

within the parameters of realignment. Thus although the Short-Doyle Act was repealed, the state was not relieved from providing 100 percent of the costs of AB 3632 services.

Background-- State Controller Audits: The State Controller's Office is responsible for, among other things, conducting audits of state mandate claims. **Over the past two years, auditors from the State Controller's Office have been conducting AB 3632 state mandate claim reviews (three years of data from 1997 to 2000) in a few counties, including the County of Orange.**

The auditors are using the Guidelines established by the Commission, and as such, may likely contend that tens of millions of dollars are owed by the counties to the state. At this time, none of the audits have been released for public comment.

In discussions with State Controller staff, it was stated that all additional AB 3632 audits have been placed on hold pending clarification with the Commission.

Constituency Concerns and Subcommittee Staff Comment: Generally, many counties have been requesting funding under the state mandate claim process **for the full cost of treatment services, not just the 10 percent as contained in the Parameters and Guidelines developed by Commission. These claims have been budgeted every year in the state budget and no one has previously questioned or contested this claiming process.**

The CMHDA contends that the Guidelines presently in use need to be updated to reflect the true operation of the program. Therefore, to audit based on the Short-Doyle payment standard is not applicable. **As such, the counties have placed the issue before the Commission seeking a revision to the Guidelines. There has been significant controversy regarding the facts of the case, as well as the options available for achieving a workable solution for all involved parties. In essence, the counties want to generally maintain the existing program and receive a reasonable reimbursement for its operation, including appropriate treatment services.**

From these discussions it is evident that absent corrective action, the counties may not only lose funding prospectively, but could also be forced to refund the equivalent of the last three year's worth of claims as submitted to the Commission. According to the CMHDA, this would take possibly hundreds of millions of dollars out of the public mental health system and would effectively, decimate many children's programs.

Further, it is the understanding of Subcommittee staff that Assembly Member Steinberg will be amending a bill to address the prospective aspect of the AB 3632 issue since the Commission is not presently poised to do so.

Proposed Uncodified "Hold Harmless" Trailer Bill Language: Based on discussions with the California Mental Health Director's Association (CMHDA), Subcommittee staff

recommends to adopt the following uncoded trailer bill language in order to hold the counties harmless for prior years.

The proposed language is as follows:

“Notwithstanding any other provision of law, with respect to the Handicapped and Disabled Students state-mandated local program, **county reimbursement claims submitted to the State Controller for reimbursement for services associated with providing eligible mental health treatment services to Special Education Program pupils in years up to and including the 2000-01 fiscal year are deemed correct and shall not be subject to dispute by the State Controller’s Office.** No county may amend a previously submitted reimbursement claim for the 2000-01 fiscal year or prior for eligible mental health treatment services to Special Education Program pupils.”

Governor’s Proposed Budget: The budget proposes a **reduction of \$12.3 million** (General Fund) to reflect a one-year deferral in advanced payments to counties for mental health services to special education pupils. **The DMH states that these costs are expected to be recovered by the counties through the local mandates process.**

Budget Issue: Does the **Subcommittee want to (1)** adopt the Governor’s proposed reduction of \$12.3 million (General Fund) to reflect a one-year deferral in advanced payments (expected to be recovered via the Commission), **and (2)** adopt the proposed trailer bill language?

III. California Health and Human Services Agency (CHHS)

ITEM FOR DISCUSSION

1. CA Health & Human Services Agency—Olmstead Trailer Bill Language

Background—Olmstead Decision: In the Olmstead decision the United States Supreme Court, among other things, ruled that **an individual with a disability has a right to live in a community setting so long as three conditions are met: (1)** the individual’s treating physician determines that community placement is appropriate, **(2)** the individual does not oppose such placement, and **(3)** the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others that are receiving state-supported disability services.

The Supreme Court indicated that **states could establish compliance** with Title II of the American with Disabilities Act (ADA) **if it demonstrates that it has: (1)** a comprehensive, **effective working plan** for placing qualified persons with disabilities in less restrictive settings, and **(2) a waiting list that moves at a reasonable pace** not controlled by the state’s endeavors to keep its institutions fully populated.

The federal Department of Health and Human Services sent letters to each Governor urging states to create Olmstead implementation plans. In addition, the federal CMS and federal Office of Civil Rights also sent a joint letter to state Medicaid (Medi-Cal) Directors providing guidance in the creation of such a plan.

Prior Subcommittee Action: In the April 22 hearing, the Subcommittee adopted placeholder trailer bill language (uncodified) to require the CHHS Agency to craft an Olmstead plan. Since this time, language has been crafted that meets the approval of the CHHS Agency. **The proposed language is as follows:**

“The California Health and Human Services Agency (CHHS Agency) **shall develop a comprehensive plan describing the actions which California can take** to improve its long term care system so that its residents have available an array of community care options that allow them to avoid unnecessary institutionalization. The plan shall respond to the decision of the United State Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999) and shall embody the six principles for an “Olmstead Plan” as articulated by the federal Center for Medicaid and Medicare Services (the Health Care Financing Administration at the time the principles were first articulated).

These principles include (1) a comprehensive, effectively working plan; **(2)** a plan development and implementation process that provides for the **involvement of consumers** and other stakeholders; **(3)** the development of assessment procedures and practices that prevent or correct current and future unjustified institutionalization of persons with disabilities; **(4)** an assessment of the current availability of community-integrated services, the identification of gaps in service availability, and the evaluation of changes that could be made to enable consumers to be served in the most integrated setting possible; **(5)** inclusion in the plan of practices by which consumers are afforded the opportunity to make informed choices among the services available to them; and **(6)** elements in the plan that provide for oversight of the assessment and placement process in order to help ensure that services are provided in the most integrated setting appropriate, and to help ensure that the quality of the services meets the needs of the consumers. The plan is due to the Legislature by **no later than April 1, 2003.**”

Budget Issue: Does the Subcommittee **want to adopt or modify the above trailer bill language?**

IV. 4260 Department of Health Services—Public Health and Medi-Cal

ITEM FOR CONSENT

1. Medi-Cal County Administration—Reallocation Language (rescind action)

Background and Prior Subcommittee Action: Counties are responsible for **conducting** Medi-Cal eligibility processing and enrollment functions. The state provides funding (General Fund and federal funds) for this purpose based on four general components: (1) recent caseload data, (2) estimated policy changes that affect eligibility processing or related functions, (3) staff training and development, and (4) cost-of-doing business adjustments.

In the April 1 Subcommittee hearing, the County Welfare Directors Association (CWDA) had requested trailer bill language to provide the DHS with the authority to re-allocate unspent Medi-Cal administrative funds to counties that overspend their allocations. The Subcommittee adopted said language.

However since that time, the DHS and CWDA have had several constructive meetings regarding many administrative issues pertaining to the operation of the Medi-Cal Program. As such, both parties are requesting the Subcommittee to rescind its April 1 action and allow the conversations to continue as part of a global discussion.

Subcommittee Staff Recommendation: Subcommittee staff therefore recommends that the Subcommittee rescind its action on this language.

ITEMS FOR DISCUSSION

1. Request to Fund Outside Counsel for ADA Related Litigation

Background: The DHS, as the single state entity in charge of the Medi-Cal Program, is seeking continued assistance with litigation defense pertaining to **two cases involving the Americans with Disabilities Act (ADA) and the Rehabilitation Act.**

Generally, the *Davis v. Secretary Grantland Johnson* litigation challenges the state's policies and practices which allegedly result in plaintiffs' and class members' unnecessary isolation and segregation in nursing homes in violation of their rights. According to the DHS, plaintiffs seek the availability and the access to a full range of home and community based services in lieu of the services available in nursing facilities. ***Davis v. Johnson* almost exclusively involves services that the plaintiffs argue are, or should be, available through the Medi-Cal Program.**

Sanchez v. Secretary Grantland Johnson is a class action lawsuit for declaratory and injunctive relief in which **plaintiffs contend that the payments (i.e. rates) the state provides for community-based services for individuals with developmental disabilities violate the plaintiffs' rights under the ADA, the Rehabilitation Act, and the Medicaid Act.** According to the DHS, plaintiffs allege that the state's failure to provide sufficient rates for community-based services **results in unnecessary isolation and segregation in the state Developmental Centers.** Plaintiffs seek rate parity for the services supplied by community-based providers with the services supplied by institutional providers (such as the DCs).

The DHS states that “preliminary estimates suggest that meeting all of the plaintiffs demands could require the creation of new community homes and services for tens of thousands of nursing home and other institutional residents at an annual cost of hundreds of millions and possibly billions of dollars.”

Budget Act of 2001 and Current Year Expenditures: The Budget Act contained an increase of **\$2 million (\$1.250 million General Fund) to fund a contract for this purpose.** These funds were provided as part of an overall budget negotiation conducted through the Budget Conference Committee process.

Finance Letter Request: The **Finance Letter is requesting (1)** a reappropriation of \$200,000 from the Budget Act of 2001 which is currently unexpended (and therefore could be applied towards the state's deficiency), and **(2)** an increase of \$2.8 million (\$1.8 million General Fund) to continue existing contracts with external financial consultants and external attorneys who are assisting the state with the two lawsuits.

Based on information provided to the Subcommittee, **the requested \$3 million in funding is to be used as follows:**

- **\$1.250 million** to continue a contract with Shartsis, Friese & Ginsburg LLP to litigate the Davis v. Johnson lawsuit;
- **\$750,000** to continue the contract with Erickson, Beasley, Hewitt & Wilson to litigate the Sanchez v. Johnson lawsuit; and
- **\$1.1 million** for Tucker Alan Incorporated to provide economic and financial analysis of the plaintiffs' demands. Work is to include numerous tasks such as developing statistical data on the relevant populations, conducting analyses of residential and non-residential provider groups, and performing a wide variety of other functions including assistance with testimony, depositions, and general discovery. Of the total amount, about \$450,000 is assumed to be attributable to the Davis case and \$605,000 is for the Sanchez case.

Assembly Subcommittee No. 1 Action: In its April 29th hearing, the Subcommittee rejected the Administration's proposal.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- 1. Please **provide a brief status update on each of the lawsuits in question. When will they be going to trial?**
- 2. Specifically, why is outside counsel needed?

Budget Issue: Does the Subcommittee want to deny or adopt the proposal given the present fiscal situation?

2. Child Health Disability Prevention (CHDP) Program—Discussion Pending May Revision (Informational) (See Hand Outs)

Historical Background--CHDP: The Child Health Disability Prevention (CHDP) Program provides pediatric preventive health care services to (1) infants, children and adolescents up to age 19 who have family incomes at or below 200 percent of poverty, and (2) children and adolescents who are eligible for Medi-Cal services up to age 21 (EPSDT).

The benefit package provided under CHDP is limited to providing a physical examination, lab tests and immunizations. About 1.1 million children receive services under the program.

Local health jurisdictions work directly with CHDP providers (private and public) to conduct planning, education and outreach activities, as well as to monitor client referrals and ensure treatment follow-up.

With respect to funding, services for children *not* eligible for Medi-Cal or HFP are primarily funded with General Fund support.

Outline of Governor's Revised Proposal (See Hand Outs): At the direction of the Governor, the DHS convened a series of constituency work group meetings to solicit options and comment on restructuring the CHDP Program to maximize enrollment in Medi-Cal and Healthy Families (more comprehensive care).

Through this process, ideas were garnered for crafting a "CHDP Gateway". As such, the Governor has reformulated his original January budget proposal to eliminate the CHDP Program and instead, **will be presenting a revised proposal at the time of the May Revision.**

Though specific details regarding financing, necessary statutory changes, caseload changes and related information are not yet know, a general framework of the proposal has been presented to constituency groups (April 30th meeting).

The *key components* of the proposal are as follows (*See Hand Outs*):

- The CHDP Program is to continue (not be eliminated) and will operate as it currently exists.
- **The CHDP “Gateway”, to be implemented effective April 1, 2003, will build upon existing technology used under the Family PACT Program, and Breast and Cervical Cancer Treatment Program. In essence, this technology allows providers to complete application forms using an internet-based process or a “point of service” device (swipe card for those without internet access) to transmit an application for program eligibility.**
- The CHDP application, with some relatively minor changes, will serve as the enrollment process for CHDP, and as a “*pre-enrollment application*” for Medi-Cal and the Healthy Families Program (HFP) (if the parent elects to have the application forwarded for this purpose).
- The Fiscal Intermediary (EDS) would process the pre-enrollment application and cross-checks this application against the Medi-Cal data file (known as MEDS).
- MEDS identifies the child as having had pre-enrollment within the CHDP periodicity. **At this juncture, the child can then either: (1) proceed to enrollment into full-scope Medi-Cal, (2) proceed to enrollment into HFP, or (3) be CHDP-only.**
- **If a child is CHDP-only, they can receive CHDP services only if the child is accessing services according to the periodicity schedule (See Hand Out). If the CHDP-only child has already received their periodicity visit, and comes again seeking medical assistance, the provider will not be able to obtain payment under the CHDP for the services provided. This is because, the Administration wants to “gateway” the child, when feasible, into comprehensive care (i.e., Medi-Cal or HFP).**
- If MEDS identifies the child as currently receiving full-scope Medi-Cal or HFP, then the family would be told to take the child to the Medi-Cal or HFP provider, as applicable. No CHDP service would be reimbursable.
- It should be noted that children completing pre-enrollment applications for Medi-Cal or the HFP **would still then need to complete full program applications for these programs. The pre-enrollment period would provide for up to a *maximum* of 60 days (two months) worth of program services in order to provide access during the time that the Medi-Cal/HFP application is being processed and finalized. Supplemental applications for Medi-Cal and HFP are to be sent to families.**

General Constituency Responses: Since the full detail of the Governor’s revised proposal is not yet available, it is difficult to fully discern what modifications may be desirable. Further, interest groups are still analyzing the information just recently provided to them in the April 30th meeting. However generally, it appears that the CHDP Gateway approach has merit for increasing enrollment in comprehensive health care programs.

American Academy of Pediatrics Periodicity Schedule (See Hand Out): When implemented in 1974, the CHDP Program conformed to the recommendations of the American Academy of Pediatrics (AAP) for preventive health care.

Since this time, the AAP has frequently updated their standards of care, as the provision of medical care has evolved. However, the CHDP Program has not updated its health assessment schedule to meet the AAP standards in *over ten years*. Yet, children enrolled in Medi-Cal Managed Care do receive the recommended AAP health assessments because it is required in the DHS contracts with the health care plans.

The revised periodicity schedule would provide up to five additional screens for ages 0 to 12, and up to six additional screens for ages 13 to 20 years.

Subcommittee Request and Questions:

- 1. Using the Hand Out information, please comprehensively describe the “CHDP Gateway” approach.
- 2. Please describe the services a CHDP-only child (not eligible for Medi-Cal or HFP) would receive, including frequency.
- 3. Please describe how the pre-enrollment process will work.
- 4. May the DHS consider updating the periodicity schedule?
- 5. How may the DHS modify the Medi-Cal/HFP Outreach activities to compliment the CHDP Gateway approach?
- 6. May the DHS consider making modifications to existing Medi-Cal forms and application processing in order to facilitate enrollment into the comprehensive care?

3. Express Lane Eligibility—Trailer Bill Language

Background: AB 59 (Cedillo), Statutes of 2001, established a statewide pilot, **effective July 1, 2002**, to provide Express Lane Eligibility to children qualified to receive free meals through the National School Lunch Program (children under 133 percent of poverty receive free meals, and children between 134 percent and 185 percent receive reduced price meals). **Children under the age of 6 shall be deemed income eligible for Medi-Cal and children who are younger than 6 years must be determined income eligible for Medi-Cal.**

This legislation also created a process to authorize consent for the release of information on applications for free lunches to County DSS and authorizes them to quickly enroll children in Medi-Cal upon receipt of such information from school districts.

Under the program, parents will be offered the option of using the National School Lunch Program application as an initial application for Medi-Cal (for no share-of-cost). With their consent, the school would then do an income screen and make a determination about Express Lane enrollment into Medi-Cal. The information would then be sent to the County DSS who would (1) issue a temporary Medi-Cal benefits card for full-scope benefits, and (2) obtain additional documentation to determine ongoing Medi-Cal eligibility. Children would continue to receive full-scope Medi-Cal until the County DSS completes its determination.

The only exception to this is for children who are income eligible and already enrolled in emergency-only benefits. These children will continue in Medi-Cal with those limitations unless additional immigration information is obtained.

Prior Subcommittee Action: In the March 11 hearing, the Subcommittee approved funding for the program but held “open” technical clean-up language requested by the DHS in order to appropriately implement the program.

Subcommittee Staff Recommendation (See Hand Out): Since the March 11 hearing, the Administration has been working with legislative staff to develop a compromise on the language. This compromise was adopted by Subcommittee #1 of the Assembly Budget Committee on April 27th.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions.

- 1. Please briefly describe the compromise language.

Budget Issue: Does the Subcommittee want to adopt the proposed language?

4. Women, Infant and Children Supplemental Food Program—Fraud Unit

Background: WIC provides supplemental foods, nutrition education, and referrals to health and social services for low-income women, infants and children who are at nutritional risk. WIC serves about 1.25 million participants monthly through about 80 local agencies which operate over 650 sites statewide.

WIC currently authorizes about 4,000 grocers to participate in the program, including chain stores, independent stores, commissaries, and “WIC-only” stores (these stores sell only WIC foods to WIC participants). Participants receive a WIC coupon package and use the coupons to redeem specified food products at authorized grocery stores throughout the state.

AB 313, Statutes of 2001, and Governor's Signing Message (See Hand Out):

Generally, this legislation directs the DHS to implement a system which allows WIC participants to grocery shop **at any authorized grocery (AAG) store** (versus a WIC "authorized" store).

The DHS intends to implement AAG **through a new contract with a banking entity that will be able to reimburse grocers under an AAG system and also provide the DHS with information needed to flag suspicious food voucher redemption patterns. No issue has been raised with this approach.**

The Governor's signing message, among many other things, directs the DHS to establish a WIC Fraud Unit. Further, the Governor states that implementing the new fraud detection provisions as part of the AAG system will mean that the DHS will not meet the bill's implementation deadline of July 1, 1002. According to WIC, implementation will now not occur until at least January 1, 2004 (per SB 801, Statutes of 2002).

WIC Branch (See Hand Outs): The WIC Branch is substantial and consists of seven distinct sections, **including a Food Management and Integrity Section which consists of four units (See Hand Out), whose function is to** assist with maintaining the program's overall integrity—from retail management, grocer compliance, and food delivery.

Governor's Budget Request: The budget proposes to utilize \$769,000 in existing federal WIC grant funds to **support 9.5 new positions** to establish a WIC Fraud Unit in response to the Governor's signing message for AB 313. Though the \$769,000 identified within the federal grant is technically "administrative" funds, **all or any portion of these funds can be redirected to provide for "food" benefits or could be provided to local WIC agencies for their administrative expenses.**

The DHS proposes to allocate these positions as follows:

- **Four to the WIC Branch:** These staff are to be used to implement fraud prevention and detection monitoring procedures to target high-risk grocers and will establish a process for conducting background checks to more rigorously evaluate grocer applications.
- **4.5 to the DHS Audits and Investigations Branch:** These staff are proposed to follow-up on cases referred from WIC and to work with WIC staff to conduct investigations, background checks and other related activities needed to assess fraud and abuse.
- **A half-time position to the Office of Administrative Hearings and Appeals, and another half-time position for the Office of Legal Services:** The DHS states that these half-time positions will conduct required hearings for disqualified grocers who appeal the action and provide consultation on investigative activities and cases being prepared for prosecution.

Legislative Analyst Office (LAO) Recommendation: At the request of the Subcommittee, the LAO extensively reviewed this proposal and recommends a reduction to it based on work load determinations. **Specifically, the LAO is recommending a reduction of 3.5 positions—one from the WIC branch (fraud prevention specialist), and 2.5 positions from the Audits and Investigations unit for identified savings of \$309,500.**

Under the LAO proposal a total of 6 positions would still be provided. Further, if the DHS needs more positions in the out years for this purpose, they can request them through the annual budget process.

Subcommittee Request and Questions: The Subcommittee has requested the DHS and LAO to respond to the following questions:

- **1. DHS briefly describe the request.**
- **2. DHS, how may the delay in program implementation affect this budget request?**
- **3. LAO, please briefly describe why the requested positions to not match the work load level.**

Budget Issue: Does the Subcommittee want to adopt the LAO recommendation and direct the DHS to utilize the unexpended funds for local assistance—either local infrastructure or food, as deemed appropriate?

5. California Children Services Language –Follow Up from Prior Hearing

Background--CCS: The California Children's Services (CCS) Program provides medical diagnosis, case management, treatment and therapy to financially eligible children with specific medical conditions, including birth defects, chronic illness, genetic diseases and injuries due to accidents or violence. It is the oldest managed health care program in the state and the only one focused specifically on children with special health care needs. By law, CCS services are provided as a separate and distinct medical treatment (i.e., carved-out service).

CCS is joint operated by the counties and the state. As such, County Realignment funds, state General Fund support, and federal funds (when applicable) are used to support the program.

Overview and Purpose of CMS Net/Enhancement Project: CMS Net is an automated case management system for CCS currently used by 49 counties and three CMS Branch regional offices. Nine other counties use other automated or manual systems. Several of

these counties, including Los Angeles, which has *over one third of the state CCS caseload*, plan to convert to the state's CMS Net System.

The CMS Net Project **links with other statewide databases**, including the Medi-Cal Eligibility Data System and the Statewide Client Index and merges client eligibility and claims processing automation with those established with EDS. **This linkage between databases creates the ability to better identify and serve clients, particularly those enrolled in multiple programs, and providers.**

The project has several phases (“enhancements”) including the following:

- CCS Eligibility Phases I and II
- CCS Service Authorizations
- Provider Enrollment
- GHPP Eligibility
- GHPP Service Authorizations
- CMS Net Reporting
- CMS Net Full Screen Conversion

According to the DHS, it is expected that the CMS Net Project, including all “enhancements”, will result in savings of \$22.3 million annually at full implementation. These savings are to be achieved by eliminating inefficiencies in the current manual claims review and cost recovery processes and by redirecting staff responsible for claims review to eligibility management and inpatient nurse case management activities.

Prior Subcommittee Action: In the Subcommittee's April 22nd hearing, placeholder trailer bill language was adopted to require the DHS to complete the major aspects of project in a timely manner. Since this time, compromise language has been crafted as shown below:

“The Department of Health Services shall complete the design and implementation of the Children's Medical Services Network (CMS Net) Enhancement 47 project to ensure that all system enhancements for CMS Net, the California Medicaid Management Information System (CA-MMIS), and the California Dental Management Information System (CD-MMIS) that are required to enable providers in the California Children's Services (CCS) provider network to submit electronic claims for reimbursement for services provided to CCS eligible children are operational by August 1, 2004.

The DHS shall also work in cooperation with county CCS programs that are not yet participating in CMS Net to take all necessary action within available resources to expedite the transition of these county programs to CMS Net for the provision of automated case management and service authorization for all CCS eligible children in their county caseload.”

Budget Issue: Does the Subcommittee **want to adopt the compromise language?**

6. Genetic Disease Testing Program —Two Issues “A” and “B”

Overall Background: The Genetic Disease Branch is responsible for the management and operation of **two screening programs—the Newborn Screening Program and the Prenatal Screening Program** (i.e., the Expanded AFP Screening Program). **Both of these programs provide clinical analyses to prevent the occurrence, or ameliorate the effects, of certain disorders.**

The Newborn Screening Program screens **about 500,000 infants, or 99 percent of the annual births, in about 325 maternity hospitals.** The Prenatal Screening Program screens **over 380,000 pregnancies annually and serves about 7,000 prenatal care providers.**

ISSUE “A”—Program Deficiency and Need for Remediation (See Hand Out)

Background—Fee Adjustments: The Genetic Disease Testing Fund is the principal funding mechanism for the Newborn Screening Program and the Prenatal Screening Program. **Fees are collected for the tests that are provided under these programs.** The fees are paid by individuals (no insurance), and through Medi-Cal and private health insurance organizations.

As of January 1, 2002 the fee charged under the Newborn Screening Program was increased by \$14 (from \$42 to \$56, including a \$1 charge for specimen record forms). The DHS increased this fee through its emergency regulation authority and stated that the fee adjustment was necessary to assure that **(1)** this program continues to be fully supported from fees, and **(2)** the program is consistent with medical standards and the mandates of the Hereditary Disorders Act (the enabling program legislation).

As discussed below, under ISSUE “B”—Screening Information System—the DHS is also intending to proceed **with an additional fee increase of \$4 (i.e., a \$60 fee level with this increase), effective as of July 1, 2002, for the Newborn Screening Program to specifically fund this information technology project.**

It should be noted that whenever the fees are increased, there is a General Fund effect because the Medi-Cal Program must fund its share as appropriate (i.e., for Medi-Cal recipients).

Program Deficiency for Budget Year (See Hand Out): Through discussions with the DHS and DOF regarding the availability of funds within the overall Genetic Disease Testing Fund, it became apparent that the technical “fund condition statement” as contained in the Governor’s January budget needed to be updated.

Based on a revised fund condition statement (received on May 1), the Genetic Disease Testing Fund is now reflecting a budget year deficiency of \$8.1 million. As shown in the fund condition statement, program expenditures are estimated to be

\$71.7 million (Genetic Disease Testing Fund). *Therefore, the \$8.1 million deficiency reflects about an 11 percent shortfall in the program.*

This revelation has caught folks by surprise and options are presently being considered for remediation. It should be noted that options are few and include the following:

- **(1) Raise fees yet again (though a fee increase of \$22 would be required to address the full \$8.1 million);**
- **(2) Reduce discretionary aspects of the program (though discretionary aspects are few and of small dollar value);**
- **(3) Reduce state staff where feasible (though program is clinically labor intensive);**
- **(4) Provide a General Fund loan;**
- **(5) Increase fee collection capabilities (current rate of collection is only 70 to 80 percent); or**
- **(6) Combinations of all of these.**

The DHS and DOF note that some time will be needed to develop options and craft a workable solution for the Legislature to consider. As such, a remedy will not be forthcoming in the Governor's proposed May Revision.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1. Please briefly describe how program revenue collections will be monitored more closely in the future.**
- **2. What can be done to increase the fee collection rate?**
- **3. When will the DHS and DOF have a suggested remediation plan to the Legislature for consideration?**

Budget Issue: Does the Subcommittee want to adopt Budget Bill Language to require the DHS and DOF to provide the Budget Conference Committee with its recommended remediation plan?

In order to send this issue to the Budget Conference Committee, Subcommittee staff is recommending the following Budget Bill Language:

The Department of Health Services, with the approval of the Department of Finance, shall provide the Budget Conference Committee with a comprehensive proposal to remedy the deficiency in the Genetic Disease Testing Fund and maintain the integrity of the Newborn Screening Program and the Prenatal Screening Program.

The purpose of this language is to serve as a “placeholder” until the DHS and DOF provide the Legislature with a remediation plan to review and act upon. This

language will in essence send the issue to the Budget Conference Committee for discussion and decision.

ISSUE “B”—Screening Information System (SIS)

Background: The DHS states that the existing information technology system for the Branch is significantly obsolete, overloaded and in danger of major failure. They contend the existing hardware is beyond regular maintenance and the manufacturers are reluctant to provide service and parts. The Branch notes that one of the microcomputers used to handle billing crashed last year and it took a week to restore it.

In addition, the existing system cannot support additional data bases resulting in the inability to expand the Newborn Screening Program to cover additional disorders such as congenital adrenal, hyperplasia and cystic fibrosis. DHS states that screening for these and other conditions cannot be added until there is a new information technology support system.

Feasibility Study Report and Estimated Cost (See Hand Out—Display 1): In 1997, the DHS received the Administration’s approval of a Feasibility Study Report (FSR) to re-engineer the Branch’s information technology processing. This FSR authorized a Request for Application process to replace the existing system. However, due to a contract protest by an unsuccessful vendor, a bid for the project was not developed until May 2000. This bid reflected additional costs due to increased detail and complexity of the program operations and costs for development, including an 18-month delivery date (was 24-months originally).

As such, the original estimate of \$9 million for this product escalated to a total cost of \$17.5 million in order to meet all of the DHS specifications.

The DHS intends to fund this project using the “G-Smart Loan” process, redirected program funds, and a \$4 fee increase (to be effective as of July 1, 2002 via emergency regulations). This fee increase would raise the cost to \$60 per participant.

G-Smart Loan: In order to *partially fund* this proposed project, the DHS is seeking a “G-Smart Loan”. The G-Smart Loan is a program administered by the Department of General Services (DGS). Generally, under this program the DGS obtains a lender who agrees to certain conditions and standards for purposes of the loan. The DHS states that the entire loan amount would be placed into a Genetic Disease Branch account and payments to the vendor/contractor would be made when authorized by the Branch.

According to the DHS, a loan of \$10.2 million will be needed under the G-Smart Loan. Based on the loan conditions, about \$2.1 million in interest will need to be paid over a

seven year period. **Therefore, a total of \$12.3 million will be required for the loan, including principal and interest.**

With the G-Smart loan providing \$12.3 million, additional funds are needed, along with a revenue source to support the proposed loan. Therefore, the DHS is proposing a \$4 fee increase, effective July 1, 2002, to offset the G-Smart Loan costs. In addition, an increase of \$400,000 (General Fund) is needed in the Medi-Cal Program to fund that program's share of the fee increase. The DHS states that even with this fee increase (total of \$60 per test), the public would receive greater value than comparable private charges.

Governor's Proposed Budget: The budget is requesting (1) an increase of about \$1.8 million (Genetic Disease Testing Fund) for 2002-03, and ongoing for the next 6 years, (2) approval to proceed with installation of the "Screening Information Systems" (SIS) Project, (3) approval of ongoing fee increases to support the project, and (4) an increase of \$1.6 million (General Fund) to fund the fee increase under the Medi-Cal Program.

Legislative Analyst Office Concerns (See Hand Out): The LAO reviewed the proposal and expressed significant concerns regarding the project. Key concerns included the following:

- The proposed information systems contract has not had a legal review.
- The proposed financing solution (i.e., the G-Smart Loan) may not be the most cost beneficial.
- The DHS has not completed a project plan or schedule.
- The roles and responsibilities for the optical scanning process are unclear.
- It is unclear if the proposed solution will meet requirements of HIPAA.

These LAO concerns have been extensively discussed with the DHS and DOF, including their information systems specialists. **Based on these conversations the LAO recommends the following actions, with the agreement of the Administration:**

- Authorize the DHS to use current year funds to **hire a project manager.**
- **Adopt Budget Bill Language (See Hand Out)** which directs the DHS to (1) have a legal review conducted of the contract, and (2) have an extensive independent evaluation of the contract, including an evaluation of the proposed optical scanning process and HIPAA compliance.
- **Adopt Supplemental Report Language (See Hand Out)** to require the DHS to report to the fiscal committees of the Legislature on a quarterly basis, beginning October 1, 2003, on the progress of the project.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- 1. Please provide a **brief description of the need for the project**, and the **key deliverables to be provided**.
- 2. Please provide a **brief overview of how the project implementation** will be monitored.
- 3. **LAO**, please briefly discuss your concerns with the project and the proposed recommendations.

Budget Issue: Does the Subcommittee want to adopt the LAO recommendations and approve the budget proposal?

7. Toxic Mold—Proposed Trailer Bill Language for Special Fund

Background: Inhalation of mold causes human toxic effects, exacerbates immunologic reactions and causes infections. Toxic effects include a variety of symptoms such as chronic fatigue, respiratory distress, nausea and non-specific symptoms. Currently, **there are no federal or state laws, guidelines or regulations regarding mold identification, exposure, or remediation.**

The lack of standards combined with the toxic health effects of mold and its broad exposure have generated thousands of lawsuits in California. Some authorities have estimated that molds will generate more litigation than asbestos. Though there is no official estimate on the number of individuals made ill by molds, the total exceeds 10,000 people.

Molds are increasingly associated with new construction which is built air tight to conserve energy and can result in reduced ventilation, excessive moisture, and accumulation of moisture behind insulation. Mold commonly grows on walls, carpets, ceilings, and in heating, ventilation and air conditioning systems. Mold may be present in a building and result in health effects without being visible.

Senate Bill 732 (Ortiz), Statutes of 2001: This legislation **enacted the Toxic Mold Protection Act**, which **among many other things**, requires the DHS to:

- 1. Consider the feasibility of adopting permissible exposure limits to mold in indoor environments and to adopt such standards if feasible;
- 2. Adopt practical guidelines to assess the health threat posed by the presence of mold in an indoor environment and determine whether the presence of mold constitutes mold infestation.

The legislation also states that implementation of the statute is dependent on the availability of funding for this purpose.

Based on discussions with interested parties, it appears that there are some organizations who may be interested in contributing to a special fund on a strictly voluntary basis in order for the DHS to accomplish the tasks as outlined in the legislation. However, the DHS would need the legal authority and a mechanism to capture these contributions.

Subcommittee Staff Proposed Trailer Bill Language: In working with the DHS from a technical assistance basis, the following language is proposed:

Add Section xxx to Health and Safety Code as follows:

The department **may receive voluntary contributions** to support the department's activities in providing guidance, developing standards and permissible exposure limits, and adopting regulations relating to indoor mold hazards, **including but not limited to duties included in the Toxic Mold Protection Act of 2001**. The contributions shall be deposited in the **Public Health Protection from Indoor Mold Hazards Fund**, which is hereby created in the State Treasury. Notwithstanding section 13340 of the Government Code, moneys in the fund shall be continuously appropriated to the department and shall be used to support the department's activities in providing guidance, developing standards and permissible exposure limits, and adopting regulations relating to indoor mold hazards, **including but not limited to duties included in the Toxic Mold Protection Act of 2001 (Health & Safety Code Sections 26100 through 26156) to the extent that funding is available.**

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please **provide a brief update** on what the DHS is currently doing to implement provisions of SB 732, as well as other actions taken to mitigate the public health concerns pertaining to toxic molds.
- **2.** From a technical assistance basis, is the above language workable?

Budget Issue: Does the Subcommittee **want to adopt the proposed trailer bill language?**

8. Special Fund Adjustments—Trailer Bill Language

Background: There are **two special funds**—Lupus Foundation of American, California Chapters Fund and the California Lung Disease and Asthma Research Fund—which are used to provide small amounts of funding for education and research related to Lupus, and for research related to certain types of lung diseases, including asthma and TB.

Proposed Trailer Bill Language (See Hand Out): Technical changes are being proposed in order to facilitate the distribution of the funds for direct allocation to the eligible parties—namely the Lupus Foundation of America and the American Lung Association of California. Specifically, the language utilizes the State Controller to allocation the funds in lieu of the DHS. This will expedite allocation and will simplify the administrative process.

Budget Issue: Does the Subcommittee **want to adopt the proposed changes?**

9. Cancer Research Program and Proposed Trailer Bill Language

Background—AB 1554: Chapters 755 and 756, Statutes of 1997 (AB 1554, Ortiz and SB 273, Burton), created the Cancer Research Act of 1997. **Among other things, this act:**

- Created the Cancer Research Fund (General Fund moneys transferred to the fund);
- Established research priorities for funding **which were to emphasize gender-specific cancers based on magnitude of incidence and mortality, that have not previously received state funding;**
- **Requires that the research priorities complement, rather than duplicate, the research funded by the federal government and other entities;**
- Required the DHS to provide for the systematic dissemination of research results;
- Required the DHS to provide for periodic program evaluation to ensure that research funded is consistent with program goals;
- Required the **DHS to provide the Legislature with a report on grants made**, grants in progress, program accomplishments, and future program directions by December 31, 1998 and annually thereafter; and
- Created the Cancer Research Council.

The annual Budget Act has provided \$25 million for this program since 1998.

Over the years, the Cancer Research Program has proven to be invaluable. Highlights from existing program research include:

- Approval of a new form of delivery of radiation therapy for treatment of cancer;

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- Investigation of the role that infectious agents play in the development of certain forms of cancer;
 - Evaluation of the quality of care for patients diagnosed with cancer; and
 - Increasing knowledge of the financial costs associated with cancer and its control.

Governor's Proposed Budget: In the current year (2001-02), the Governor proposed to reduce the program by \$4.5 million; however, the Legislature restored this cut by identifying General Fund savings in another area.

The Governor's budget for 2002-03 proposes to eliminate the entire \$25 million (General Fund) for the program. It should be noted that though the Governor's eliminates funding for the budget year, it does not propose to eliminate the statutory framework of the program.

Further, **trailer bill legislation is proposed which would enable existing funds to be carried forward for multi-year contracting to occur. This language is as follows:**

“The balance of the appropriations in Item 4260-001-0589 of Chapter 50 of the Statutes of **1999**, Item 4260-001-0589 of Chapter 52 of the Statutes of **2000**, and Item 4260-001-0589 Chapter 106 of the Statutes of **2001** is hereby reappropriated and shall be available **for encumbrance and expenditure until July 30, 2005.**”

Assembly Subcommittee Action: The **Assembly Subcommittee #1** on Health and Human Services placed **(1)** \$25 million on a Suspense File, **and (2)** adopted placeholder trailer bill language to cap the allowable **federal indirect overhead rate at 25 percent.**

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following questions.

- **1.** Please **provide a status update** on the activities of the Cancer Research Program.
- **2.** Is the Administration' elimination of the program solely due to the fiscal situation?
- **3.** When may the report to the Legislature be provided?
- **4.** Please **describe the indirect overhead**, and should it be capped at a specific percentage?

Budget Issue: Does the Subcommittee **want to restore all or a portion of the funding for this valuable program, and adopt trailer bill language to allow for multi-year contracting and to cap the allowable federal indirect overhead rate at 25 percent?**

10. Medi-Cal Personal Care Option—Elimination of the Sunset

Background and Governor's Budget Proposal: In 1993, California implemented the Personal Care Services Program option under Medicaid (Medi-Cal). **Under this option, the state can collect federal financial participation for medically necessary services provided to In Home Supportive Services (IHSS) clients who are Medi-Cal eligible.**

The budget proposes **to eliminate the sunset date**, as contained in Section 14132.95 of the Welfare and Institutions Code, in order to continue the existing program.

Subcommittee Request and Questions: The Subcommittee has requested the DHS to respond to the following question:

- **1.** Please briefly describe why the elimination of the sunset is desired.

Budget Issue: Does the Subcommittee want to adopt the language to eliminate the sunset?

LAST PAGE OF AGENDA